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BOLD ATTEMPT

BY THE

BANK OF CALIFORNIA

TO

BREAK UP THE SUTRO TUNNEL ENTERPRISE.

PROCEEDINGS

IN THE HOUSE OF REPRESENTATIVES, MARCH 17, 22, AND 23, 1870,

ON

THE BILL EXPLAINING AWAY THE VESTED RIGHTS OF THE SUTRO TUNNEL COMPANY.



WASHINGTON:
F. & J. RIVES & GEO. A. BAILEY,
REPORTERS AND PRINTERS OF THE DEBATES OF CONGRESS.
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SUTRO TUNNEL.

THURSDAY, *March 17, 1870.*

Mr. FERRISS. I have been instructed by the Committee on Mines and Mining to report back House bill No. 1179, explanatory of the act of July 25, 1866, relating to the Sutro tunnel, and to move that the committee be discharged from its further consideration, and that the same be laid on the table. This is not a unanimous report, and the committee have consented that the gentleman from California [Mr. SARGENT] might make a minority report, with the consent of the House.

Mr. SARGENT. I will have the minority report ready to-morrow. As the morning hour is about to expire I would ask to have action suspended upon this bill till to-morrow.

The SPEAKER. That would require unanimous consent, as it would interfere with reports of other committees. There are eight minutes of the morning hour now remaining.

Mr. SARGENT. I will state that the original bill giving a grant of land and certain privileges to Adolph Sutro and his assigns provided among other things that Mr. Sutro should have a royalty of two dollars a ton upon all rock that should be taken out of the Comstock lode by certain companies which were mining upon that lode after he had got his tunnel in to a certain extent and in a certain condition, whether that rock was taken out of his own tunnel or drawn to the surface by the hoisting-works of the companies.

Prior to that time a contract had been made with Mr. Sutro by some of the companies upon the lode wherein they bound him positively that he would within a certain length of time commence three shafts for the purposes of this tunnel, and have certain other work done upon the tunnel; that he would get subscriptions to the stock of the company to the amount of a certain number of millions of dollars as a guarantee of his good faith and of the early completion of the tunnel. While that contract was in force, and before the expiration of the time within which these conditions were to be performed, Mr. Sutro came to Congress, and with his peculiar ability for representing his case in the strongest light to members personally,

induced Congress to pass an act declaring that the amount of compensation provided to be paid to him in these contracts should remain a tax upon the companies forever, no matter whether he performed his part of these contracts or not. That was the logic of the act of Congress which was passed; and to show that I am correct in this I call attention to the fact that the press of this District a day or two since, in commenting upon the action of the Committee on Mines and Mining, stated that the proposition to repeal this section had been voted down in that committee, leaving me in a minority of one, and that thereby there was confirmed to Mr. Sutro forever the right to charge two dollars a ton on all rock which may be taken out of that lode.

After that act was passed, and when Mr. Sutro himself evidently did not dream of this construction to be put upon it; when even he did not suppose that it released him from the necessity of complying with his part of the contract and finishing the tunnel within a certain length of time, he went to those companies and procured from some of them an extension of the time during which the contract should run. But the original time expired and the extended time expired, and the companies, when they applied under the mining law of 1866 for their patents, found that the law contained a provision that they should not have a patent for a single claim unless the patent contained a provision imposing this immense tax on them for all time.

But before that construction of the law had been made the companies, in consequence of his delay in finishing his work, which up to the present time is scarcely more than commenced, and until within a few months not commenced at all, had gone on and erected upon those claims heavy machinery, whereby they went down deep into the bowels of the earth and made the developments which it was said this tunnel would accomplish. They found among other things that there was no water down there to be drained out by this tunnel. It was found also that when shafts were extended perpendicularly into the earth

and connected with the drifts extending horizontally a strong draft was created, making the air down there as cool as upon the surface of the earth—so much so that visitors to the mines were cautioned not to sit down lest they might take cold; and throughout the mines gates are put across these shafts and drifts in order to prevent a too strong current of air, by which the candles of the miners might be blown out and their work incommoded.

By these developments the original objects of the tunnel were shown to be fallacious, that the tunnel was not necessary for the purpose of draining off water or for purposes of ventilation.

The SPEAKER. The morning hour has expired, and the bill goes over.

TUESDAY, *March 22, 1870.*

Mr. ALLISON. I call for the regular order of business.

The SPEAKER. The regular order having been called for, the morning hour will now commence, at ten minutes past twelve o'clock. The first business in order during the morning hour to-day is the consideration of the bill (H. R. No. 1179) explanatory of the act of July 25, 1866, relating to the Sutro tunnel, upon which the Committee on Mines and Mining made an adverse report. Upon this question the gentleman from California [Mr. SARGENT] is entitled to the floor for fifty-two minutes remaining of his hour.

Mr. SARGENT. I yield for forty minutes to the gentleman from Nevada, [Mr. FITCH.]

Mr. FITCH. I ask that the bill be read.

The bill was read. The first section provides that the third section of an act entitled "An act granting to A. Sutro the right of way, and granting other privileges to aid in the construction of a draining and exploring tunnel to the Comstock lode in the State of Nevada," passed July 25, 1866, shall not be so construed as to impose an obligation upon any person, company, or corporation owning claims or mines upon said Comstock lode to contribute or pay to the owners of said tunnel any charges except in accordance with the terms of such agreements as have been or may be made between said person, company, or corporation and the owners of said tunnel, nor shall it be so construed as to relieve the owners of said tunnel from the performance of any of the conditions in said agreements covenanted therein to be performed on the part of the owners of said tunnel, nor from any of the consequences legally attaching to a failure to perform such conditions. The second section provides that it shall not be necessary to express any condition in any grant which may hereafter be obtained from the United States by the owners of said mines, but all persons, corporations, or companies obtaining grants or patents shall be bound by the terms of all contracts made with the owners of said tunnel by them, or their predecessors in interest.

Mr. FITCH. Mr. Speaker, if those mem-

bers of this House from the Pacific coast who favor the passage of this bill shall fail to satisfy the House that it ought to pass, then they are here to very little purpose. I do not claim that any gentleman upon this floor should surrender his judgment to mine even upon questions local to Nevada. But I do claim that we who have passed the best part of our lives in that country are entitled to be largely consulted with respect to all measures of legislation peculiarly affecting our constituents.

I have nothing to say against the Sutro tunnel as a project, and have no unkind sentiments to express toward its projector. If there be those who are inclined to think that the tunnel projector is almost as great a bore as the tunnel projected, I am not of that number. I admire the persistency and intensity with which he pushes his interests and explains his plans. He is possessed by an hallucination to the effect that the president and directors and stockholders and agents of the Bank of California have passed their entire time for years in devising plans to rob him of a supposititious inheritance in the Comstock lode. But aside from this madness, which has a certain method in it, as I will presently explain, he is a man of some cleverness and great ingenuity and tenacity. By the exercise of those qualities Mr. Sutro succeeded, in 1866, in inducing Congress to enact a law, a cunningly-worded section of which creates a monstrous monopoly and imposes an unjust and unnecessary tax upon the greatest silver-producing lode in the world. I do not believe that the Congress of 1866 intended to bestow this enormous franchise upon Mr. Sutro, or to inflict this unwarranted oppression upon the companies mining upon the Comstock lode.

I believe that the third section of the act of July 25, 1866, which it is now proposed to modify, or amend, or explain, was the result of accident or negligence, so far as Congress is concerned. I ask the House now to pass the bill reported by the gentleman from California, [Mr. SARGENT,] and undo the wrong inadvertently perpetrated by its predecessor, and I beg the attention of gentlemen to a statement, brief in its character, of the facts and circumstances under which the act of 1866 was permitted to become a law.

The mines upon the Comstock lode are worked by means of perpendicular shafts, from which at different levels drifts are run along the lode which contains the silver-bearing quartz. The ore when excavated is placed in small cars running upon tracks at the bottom of the drifts and taken to the main shaft, where it is hoisted to the surface; from thence it is transported to mills, where the silver is extracted. These mills are situated at different distances from the mines, from a hundred yards to fifteen miles away. The mills at a distance are in the vicinity of forests where wood can be cheaply obtained. These mills are generally situated upon streams which furnish without expense water for the various uses for which water is needed in a quartz-mill. The mills situated near the mines are obliged to pay a high price for water and to bring wood at a great cost from

a distance of from ten to twenty miles. The expense of hauling the quartz rock in one case is about the same as the expense of hauling wood and purchasing water in the other. Thus, whether the mill be near the mine or a dozen miles away, the expense of reducing the ore is about equal.

Now, in 1865 the various shafts upon the Comstock lode were down about five hundred feet. The companies were put to a great expense to pump the water out of the mines, which water increased in quantity as the shafts descended; and in consequence of a want of communication between the shafts by drifts under ground the miners suffered to some extent from want of ventilation. At this juncture Mr. Adolph Sutro proposed to construct a tunnel which should be commenced near the Carson river, two thousand feet below the mines and about seven miles distant, which tunnel should run in a direct course under the mountain and cut the ledge at a depth of eighteen hundred feet, from which point the tunnel should be extended, or another tunnel constructed, north and south along the front of the ledge. The alleged advantages of the tunnel were that the mines would be drained by it, and the great expense of pumping and pumping-machinery avoided; that the air would enter the tunnel and find its way to the surface through the various shafts as through chimneys, thus ventilating the mines and saving the cost of ventilating-tubes and machinery; that the mines could be worked through this tunnel more advantageously than from the surface, because the ore could be tumbled into the tunnel, there placed upon cars and transported at small expense to the Carson river at the mouth of the tunnel, where mills could be erected; and that by means of this tunnel it would be demonstrated at small expense to the companies mining upon the Comstock lode whether the silver-bearing quartz of that ledge extended to a depth of eighteen hundred feet, as was very generally supposed.

Sir, the magnitude of the project appealed to the adventurous spirit of our people; its practicability and advantages were plausibly urged by its projector. A charter was obtained from the Legislature of Nevada granting the right of way and some other privileges to Mr. Sutro and his associates, and by that persistence and that way of stating his case, which are his distinguishing characteristics, Mr. Sutro succeeded in inducing the companies mining upon the Comstock lode to enter into contracts with him for the construction of the tunnel, on the faith of which contracts he claimed to be able to procure the capital requisite to construct the tunnel. I have one of these original contracts, which I send to the Clerk's desk, and I ask that articles one and three, and the part of article four marked with black lines, be read.

Mr. VAN TRUMP. Does the gentleman propose to pass judicially on these contracts?

Mr. FITCH. No, sir. I will explain to the gentleman if he will be patient exactly what I want.

The Clerk read as follows:

"ARTICLE 1. The parties of the first part, in consideration of the premises, and in consideration of the covenants and agreements hereinafter mentioned, to be kept and performed by the party of the second part, covenant and agree to and with the party of the second part, that the parties of the first part will, on or before the 1st day of August, 1867, commence and with reasonable energy and vigor, and at their own expense, run, excavate, and complete the tunnel and lateral drifts hereinafter mentioned, and put the same in condition for use, in accordance with the provisions of the said act of the Legislature of the State of Nevada, and with the covenants in this agreement contained, for the purpose of draining the mines on the said Comstock lode, and furnishing other conveniences for working the same."

"ART. 3. The parties of the first part covenant and agree that the work shall be commenced at the time specified, by running the tunnel from the foot hills of Carson valley; and also by simultaneously sinking at least three shafts of sufficient capacity on the line of the tunnel, and when the shafts have reached the depth required for the level of the tunnel, then to drift in both directions from the bottom of each shaft, so that there shall be at least seven places of excavation going on from the time that all of the shafts shall reach the requisite level all the time until the tunnel is completed, unless connections between some of the shafts are sooner made; and the said work at all times shall be prosecuted continuously and without any interruption, except from unavoidable accident, until the completion of the tunnel, and of the works which under this agreement are to be considered as draining the mine of the party of the second part; and in case of any such interruption occurring, the cause thereof shall be removed or remedied and the work resumed without delay.

"And the parties of the first part covenant and agree, that on or before the said 1st day of August, 1867, there shall have been subscribed, in good faith and by apparently responsible persons, at least the sum of \$3,000,000, for the purpose of carrying on and completing the said tunnel and the lateral drifts hereinafter mentioned; that of said sum at least ten per cent. shall have been actually paid in cash; that during the first year in which the work shall be prosecuted, commencing on said 1st day of August, 1867, there shall be expended upon, or on account of the work, not less than the sum of \$400,000, and during each succeeding year thereafter, until the work shall be completed so as to drain the mine of the party of the second part within the meaning of this agreement, not less than the sum of \$200,000, provided that this amount can be advantageously expended after the completion of the main tunnel, and that they, the parties of the first part, will within thirty days after the expiration of each year furnish to the party of the second part a full, true, and correct statement of the expenditures made on account of the work during such year, verified by the oath of the managing agent and secretary or book-keeper of the parties of the first part.

"ART. 4. If the work shall not be commenced on or before the said day, and with said sum of \$3,000,000 subscribed, and ten percent. thereof actually paid in cash, as hereinbefore provided, or if, after so commencing, the parties of the first part shall during any year fail to expend on account of the work the sum of money hereinbefore agreed to be expended during such year, this agreement shall, at the option of the party of the second part, cease and determine, and thereafter be of no effect."

Mr. FITCH. Mr. Speaker, it will be seen from the provisions of the contract read by the Clerk that the companies agreed to pay Mr. Sutro the large royalty of two dollars a ton on all ore extracted from their mines whether it should pass through that tunnel or not, after the tunnel had reached a point five hundred feet distant from the west fall of the Comstock ledge. But they required the tunnel to be commenced on the 1st of August, 1867; they required him to commence it not merely at its mouth, but at six other points, to commence it by means of drifts to be run from the bottom

of three shafts to be sunk between the mouth of the tunnel and the Comstock lode, which shafts were also to be commenced by August 1, 1867. Once so begun, the work was to be prosecuted with diligence. The assault once commenced upon the rock-ribbed fortress wherein nature had buried her treasures was never to cease until the garrison surrendered. They surrounded their great concession with every possible guarantee and safeguard. They required him not merely to commence the tunnel at the time and in the manner demanded by the contracts, but they required him to obtain from responsible parties subscriptions to the stock of the tunnel company amounting to the sum of \$3,000,000 by the 1st of August, 1867, of which some \$300,000 were to be actually paid in cash. They required him to expend not less than \$400,000 the first year in prosecuting the work. They said, as plain as language could say, that the very purpose of the bargain was that the tunnel might speedily furnish them with that draining, that exploration, that ventilation, that facility of transportation they would otherwise be compelled to obtain by means of expensive machinery for hoisting, pumping, and ventilating, and expensive railroads to be constructed upon the surface from their mines to wood and water. The companies did not give Mr. Sutro a franchise for the purpose of speculation or exploration. They did not give him a right to commence a tunnel at any time within a decade and complete it at any time within a century, and bind themselves and their heirs irrevocably to pay him two dollars per ton upon all the ore taken from their mines, whether that ore should come through that tunnel or not.

Time, as will be seen, was the very essence of the contract, so far as the companies were concerned. Time was the central idea, the pivotal point of the transaction, and no man who reads those conditions in those contracts and who believes that the companies mining on the Comstock lode were other than corporate lunatics, idiotic entities, would believe that they agreed to give, or did give, or ever consented that Congress should give to Mr. Sutro the enormous franchise of commencing that tunnel at his leisure, prosecuting it at his leisure, and compelling them to pay two dollars a ton on all their ore, if and whenever and however he should conclude to undertake it.

Mr. NIBLACK. Will the gentleman allow me to ask a question? I understand him to claim that Congress made a mistake in regard to certain legislation enacted in 1866 for the benefit of this Sutro tunnel. Now, I would like to inquire of him whether the entire delegation of the State of Nevada, including its Representative in this House as well as its two Senators, did not support the passage of that act?

Mr. FITCH. I will answer the gentleman in the course of my argument.

Mr. FARNSWORTH. I have not examined the report presented by the minority of the committee, and I should like to ask the gentleman whether Mr. Sutro has commenced to

make this tunnel and expended money on it according to the agreement?

Mr. FITCH. Mr. Sutro has not commenced to make this tunnel, nor has he expended money on it according to the agreement at all. I will come to that matter before I close.

Mr. FARNSWORTH. Then what sort of reason is there for requiring the mining companies to pay the two dollars a ton upon the ore extracted?

Mr. FITCH. That is the very thing in regard to which I am trying to convince the House. I am afraid there are some members who think there is a reason.

Mr. BIGGS. Will the gentleman allow me to make an inquiry?

Mr. SARGENT. I object to any further interruptions.

Mr. FITCH. I decline to be interrupted, and I will state in explanation of my doing so that I think I will be found to have anticipated in the argument I am about to make every question which may be asked, and if I fail to answer any objection which occurs to the mind of any gentleman I shall be ready after I get through to be further questioned; but I decline to yield as I am proceeding with my argument, my time being limited.

I say that no man who reads these contracts can believe that Congress intended to bestow any such monstrous and outrageous franchise upon Mr. Sutro as is claimed by the construction now placed upon the third section of the Sutro tunnel act, and yet that is exactly what Congress did; and it was done in phraseology so cunning, and Mr. Sutro kept so quiet about it, that until October last it was never discovered by the companies, nor did they become aware of its bearing. The companies mining upon the Comstock lode supposed that the Sutro tunnel project was abandoned; they did not think that Congress would ever grant the subsidy asked by Mr. Sutro; and when the 1st day of August, 1867, passed by, and the stock was not subscribed, and the money not paid in, and no money expended, and no shafts begun, and no tunnel commenced, they knew so far as they were concerned that even if Congress did grant the subsidy to build a tunnel or aid in its construction they were released under their contracts from their obligation to pay a royalty of two dollars a ton upon the ore, which royalty depended upon the tunnel being commenced at that time.

Mr. FARNSWORTH. If it would not interrupt the gentleman I would inquire whether any court has ever construed this section in a manner to require the owners of the mines to pay the two dollars?

Mr. FITCH. I will answer the gentleman. The act of Congress requires that the condition shall be inserted in the patents to the miners to be issued by the Commissioner of the Land Office that they shall hold their mines subject to this condition. Now I want it understood what that condition was. Instead of the third section making the title of the companies depend on the fulfillment of the terms of the contract, as we now ask, the

language is that they shall pay to Mr. Sutro and his associates a sum of money as royalty, according to the rates named in certain agreements; thus merely referring to those contracts as fixing the rate instead of enforcing the contracts themselves, as was supposed by every person when the law was passed, and as might now be supposed on a superficial and cursory inspection of it.

Now, sir, I say that those companies knew that under their contracts they were not bound to contribute this royalty to Mr. Sutro, because he did not commence the tunnel at the time agreed upon, and after the 1st of August, 1867, whatever expectations they might have entertained prior to that time that this tunnel ever would be commenced were abandoned, and all of them, except a few who granted one year's extension, relied as before upon other plans for working their mines.

Since that time there has been constructed, by means of aid granted by several counties in Nevada—whether wisely granted or not I do not say—a railroad from the mines to Carson, a railroad twenty miles long, for the construction of which the companies made large advances, on which railroad the ore is now carried to the mills and wood and water brought to the mines at a greatly reduced cost. Since that time they have erected new and expensive machinery at the mines for pumping and ventilating and sinking shafts. Since then they have sunk shafts to a point within a few hundred feet of the proposed level of the Sutro tunnel, and have demonstrated the unpleasant fact that the ore deposits of the Comstock ledge do not grow in value or even continue their value as the ledge descends. By means of drifts run between these shafts they have secured a tolerable ventilation of the mines, and the developments of the pits have overturned the theories of science, for below seven hundred feet water in considerable quantities exists no longer. In most cases drainage facilities are not now needed. In some of the principal mines of the Comstock lode they have not water enough for their necessary use. I know that in a pamphlet circulated here a quotation has been made from an article in a newspaper published at Virginia City in which it is stated that there is a large amount of water in the Ophir shaft. That quotation is disingenuous and intended to deceive, because the Ophir shaft referred to is a new shaft not connected by drifts with any other shafts, and has not yet gone below what I will designate as the water belt.

Now, after these developments made at the expense of the companies have shown that the tunnel is not necessary for the purposes for which it was originally supposed to be necessary, Mr. Sutro comes forward with his great national work dwindled, so far as the necessities of the companies mining on the Comstock lode are concerned, to the dimensions of a great private speculation, and demands tribute of these companies; demands that they shall pay him, under this construction of the act of Congress, two dollars a ton on all the ore taken out

of their mines if he concludes to run this tunnel at any time at his leisure. Sir, the companies feel that there is no equity, that there is no justice, that there is no decency in the demand of Mr. Sutro. In the days of their prosperity, when labor was high and transportation expensive, and the cost of reducing the silver ore about double what it is now, they passed by millions of tons of low-grade ore lying within a few hundred feet of the surface. The developments made at their expense have shown that this ore is now their main resource, and they are returning to it and endeavoring to work it. The construction of a railroad, improved machinery, and the reduction of the cost of living enable them now to work this ore at a profit of two to five dollars a ton. If the Sutro tunnel were completed to-day that part of their mines where this ore is situated would not be drained and ventilated by it, nor would the ore be transported through it, nor would the tunnel be in anywise a benefit to them; yet if the tunnel is constructed they will have to pay the royalty on their ore whether they use the tunnel or not.

In this view of the case these companies may perhaps be pardoned for congratulating themselves that Mr. Sutro did not commence the tunnel within the time prescribed by the contracts; they may be pardoned if they congratulate themselves that they carefully guarded, protected, and hedged their interests in making these contracts. But now, behold, Mr. Sutro comes forward in October last, three years after the time when he was required to commence the tunnel under the contracts, and commences in a feeble manner a sort of hole in the ground. He does not commence at the place nor in the manner specified, but he expends a very few thousand dollars, not to exceed \$5,000, of somebody's money upon it, and upon the basis of some right which he supposes he has acquired in consequence of that act he comes to the companies and says, in effect, "You must settle with me; I have no claim upon you under these contracts which I have failed to fulfill, but Congress has given me a claim upon you by law, and you must pay me tribute; I propose to run this tunnel; Congress has said that if I choose to run it at any time within a hundred years you have to pay me two dollars a ton on your ore; I propose to run it whether you want it or not, and whether it is necessary or not, in order to avail myself of the royalty imposed by Congress; you may settle with me, gentlemen, but in the mean time you hold the title to your mines subject to the depreciating cloud that I may construct that tunnel."

This is not right. The companies never contracted for it; Congress never intended it. It is a flagrant outrage upon the property rights of our citizens. The delegation in Congress from Nevada, her Senators and Representative, and most of the Senators and Representatives from the Pacific coast, now ask Congress, not to deprive Mr. Sutro of any rights he may have acquired under that contract, but to so amend and modify this Sutro

tunnel law that it may conform to and sustain and not overthrow the Sutro tunnel contracts.

I say it is not right that Mr. Sutro should retain this monstrous and iniquitous franchise, procured by his own bad faith and the inadvertence of Congress. It is not right, and no amount of Sutro speeches or pamphlet effusions against the Bank of California can make it right.

I am not the defender or the apologist of the Bank of California. It is said that that institution compels the tributary industries of Nevada to own the sway of a monarch whose rule is exacting and relentless. It is said that its golden shackles have clanked under the ermine and along the floors of the council chambers of two States. Whether those statements are true or false they touch me not. I have not had the fortune or misfortune to receive aid or favor from, or be under any obligation whatever to the Bank of California or any of its agents or officers or representatives.

But whether those statements be true or false, whether the Bank of California or the bank ring of California have or have not been guilty of what is charged in these pamphlet effusions, I cannot for the life of me see how the leading industry of Nevada can be emancipated from the rule of the bank ring or the clutch of the Bank of California by placing upon them the additional clutches of Mr. Adolph Sutro.

I cannot see how you can lift one burden by piling on another. If the mine-owners upon the Comstock lode, or the stockholders of the mines, are within the clutches of the Bank of California I cannot see how you can help them out of its clutches or strengthen them to resist its assaults by draining their little remaining life-blood into the waiting vessel held clamorously out by the remorseless Sutro.

If the owners of those mines do not know enough to work their property properly, if the agents of the mining companies are not honest enough to work them fairly, I cannot see how intelligence can be imparted or integrity induced by placing upon them a further and more iniquitous exaction. You cannot help the besieged by making a breach in their defenses in another locality.

It seems to me that Mr. Adolph Sutro is trying to cover up his proposed plan of plundering my people by yelling "stop thief" at the Bank of California. For one I shall not be deluded by this shallow trick, and I decline to give my assent to what I believe to be a dishonest measure for the cowardly reason that that measure may be opposed by the members of an unpopular corporation.

These contracts were signed in April and May, 1866. Under these contracts Mr. Sutro represented that he could procure the money requisite to construct this tunnel. The companies gave him a year and three months to get the money and commence the tunnel. In July, 1866, two months after the contracts were made, he came here with the avowed purpose of inducing Congress to grant him a subsidy to assist in the construction of the tunnel. The companies sent no one here to watch him.

They depended upon his honesty and willingness to carry out the terms of his contract. They never dreamed that he would come here and endeavor to procure the enactment of a law which should bind them and release him from the solemn provisions of a contract, upon which their mutual signatures were scarcely dry.

Mr. Sutro agreed in May that he would commence the tunnel by the 1st of August, 1867, at different points, would prosecute it with diligence, would obtain subscriptions to the amount of \$3,000,000, \$300,000 to be paid in, and would expend \$400,000 during the first year. In July Congress abrogated all those provisions. Congress said, "You may commence the tunnel at any time you choose, you may construct it as leisurely as you please, and the companies shall be bound to pay you just the same."

It has been said that the companies consented. Sir, will any man say that the companies consented in July that Congress might smite down in a paragraph all the carefully-guarded provisions upon which they had solemnly insisted in May? Will anybody say that these companies cheerfully consented that Congress should grant a franchise which should make the title to their property subject to the rapacity and caprice of a speculator? Sir, I do not believe that the Congress of the United States designed to perpetrate this shameless outrage upon the property rights of the citizen.

The power of Congress in the premises I do not question, because the title to the mineral lands of the United States was then as now vested in the Government; the paramount title of the mines was in the United States, and the Constitution of the United States gives Congress the right—

"To make all needful rules and regulations concerning the territory and other property belonging to the United States."

But by usage, by long silence, an implied agreement has grown up that Congress will not interfere with the possessory title to mineral lands. For twenty years the courts have recognized and protected the possessory title of the miner. Under that title over a thousand million dollars have been extracted from the earth, and have vivified the current of trade and strengthened the structure of credit. Under that title millions upon millions of dollars have been invested in mining enterprises.

Sir, in the hour of our nation's dire necessity, when you eagerly peered in every direction for new sources of revenue, you respected the title of the miner. In that hour you refused to obtain revenue by parting with this dormant Government title to mineral lands. You rejected upon grounds of public policy a proposition then to inflict a tax, a crushing tax of five per cent. upon the gross proceeds of those mines, even for the benefit of the public Treasury. Will you now inflict a greater tax for the benefit of a plausible and pertinacious adventurer, who tells you that the miners do not know how to work their mines; that these men should not be permitted to manage

their own property in their own way, but that he should be selected by Congress to manage it for them, and that they should pay him two or three million dollars for his scientific attainments as a congressional manipulator? Sir, if with the lights before us Congress shall refuse to relieve us from this oppression, I, for one, shall almost be inclined to think that the whisper of the lobbyist is sometimes more potent here than the protest of the Representative.

[Here the hammer fell.]

Mr. SARGENT. I yield to the gentleman all but two minutes of my time.

The SPEAKER. That will give the gentleman nearly ten minutes.

Mr. FITCH. It has been asked how that law of 1866 happened to be so worded. I cannot answer.

Mr. VAN TRUMP. I wish to recall the attention of the gentleman to the question which I asked him and which he has failed to answer; that is, taking it for granted that all the gentleman's statements are true, is not the question strictly one for the courts to decide?

Mr. FITCH. No, sir; if it were not for the section with regard to the patents it might be so; but the act compels these companies to accept their patents to their mines subject to the condition of paying Sutro a royalty imposed by Congress and not agreed to by the companies. I do not know why this act was so worded. I can conjecture how a committee, urged to do a great deal and willing to do something for the man who urged them, should report with careless facility a law insidiously framed. Experience shows us every day how bills reported by a regular committee and meeting no opposition pass this House without discussion or examination. All that can happen very easily. But, sir, when fraud and oppression crawl into the statute-books through the carelessness of the Legislature or the cunning fraud of the lobbyist, he is an audacious man who claims a vested right in the fruits of his own wrong doing and demands that Congress shall not repeal a law it was defrauded into enacting.

Mr. VAN TRUMP. But suppose the law was repealed, it would still be a question for the courts.

Mr. FITCH. If the law be repealed, that is all we ask. All we ask is that the third section of the law shall be repealed or modified so as not to create an independent obligation, and not that the contract shall be abrogated. We do not ask to be released from the contract.

Mr. WOODWARD. I wish to know how it is that the State of Nevada, as I understand it, has advocated the Sutro tunnel from the beginning to now, and yet the Representative of that State upon this floor states that he wants the law we have passed on the subject repealed.

Mr. FITCH. I am not against the Sutro tunnel.

Mr. WOODWARD. We have petitions after petitions from Nevada in favor of the Sutro tunnel.

Mr. FITCH. I will yield for a question, but I have not time to yield for a speech.

Mr. WOODWARD. Why does the Representative oppose the Sutro tunnel when the State asks for it?

Mr. FITCH. I will try to make the matter clear to the gentleman from Pennsylvania. The Representative of Nevada does not object to the Sutro tunnel as a project. I would be willing to vote any quantity of money to aid the Sutro tunnel as an exploration project and to discover whether any mines exist between the Carson river and the Comstock lode, if I were satisfied that the money would be expended in Nevada, and not in Washington and Paris, and would go to purchase picks in place of gilt-edged, morocco-bound volumes of glorification of Adolph Sutro. But I have no objection to the Sutro tunnel as a project. What I object to is this: that Mr. Sutro has procured an act of Congress which compels these mining companies to pay him two dollars a ton for all the years to come, whether he complies with his contract to complete the tunnel in time or not. Time is the very essence of his contract, as I have already stated. Nevada may want the tunnel, but I am sure her people do not want it bad enough to force the money for its construction from the overtaxed industries of those who would be compelled by Mr. Sutro to pay him, although he failed to fulfill his agreements.

I wish to say in conclusion, Mr. Speaker, that if this law had been understood in 1866, when it was passed, as it is now, every Senator and Representative from the Pacific coast would have denounced it for the monstrous iniquity it is. I admit the question of intent or non-intent is of little consequence; but the law passed into the statute-book. It stands to-day a perpetual menace to the miners, and clouds the title to millions of property. It stands to-day a franchise of power and plunder as limitless as iniquitous. The question now is, will Congress undo this wrong when it is exposed? Will it listen to the request of members from the Pacific coast who have no interest hostile to the interests of this great nation, of which we form a part; or will it perpetuate this outrage in the face of the explanation we have now before us?

Mr. BECK. I ask the gentleman to let me ask him a question before he sits down.

Mr. FITCH. I yield what time I have left to the gentleman from Indiana, [Mr. Voorhees.]

Mr. VOORHEES. Mr. Speaker, I have listened with a great deal of interest and a great deal of pleasure to the gentleman from Nevada, and all the object I have in rising at this time is to see whether my understanding of this matter is correct. I understand this question to be comprised in the following facts: these miners of the Comstock lode have made a contract with Mr. Sutro by which he was to commence a tunnel by the 1st of August, 1867; that unbeknown to them he came here and obtained a law of Congress which extended indefinitely his time to do that work and inflicted upon them the necessity of taking their grants from the Government when they obtained them

to this mining land, subject to two dollars royalty on every ton they took out, running indefinitely into the future; and thus, as I understand it, the issue is between Mr. Sutro, who contracted with these miners to commence his tunnel on the 1st of August, 1867, agreeing to give him a royalty of two dollars a ton, and the miners on the other hand, who object to this law, which Mr. Sutro obtained some time afterward, which gave him an indefinite time in which to construct this work, and made all their grants from the Government subject to this two dollars royalty upon the ton running on, leaving it to him when to commence. Now, if I have comprehended the argument of the gentleman from Nevada [Mr. FITCH] that is about it.

But I rose more for the purpose of answering questions, which I am aware, in the course of a deliberate speech, could not be so well answered by the gentleman as by another who has been listening. I would call the attention of the gentleman from Ohio [Mr. VAN TRUMP] to the fact that, as I have stated, here is a contract set forth between the miners and Mr. Sutro, by which he was to go to work and commence his tunnel on the 1st August, 1867—

Mr. VAN TRUMP. Is not the question thereby raised one of damages for the courts to settle?

Mr. VOORHEES. It is a question for this body to settle, by the repeal of this law.

Mr. BECK. I should like to ask the gentleman from Indiana a question. Is it a fact that those miners cannot get a title to their lands without taking it subject to this royalty?

Mr. VOORHEES. That is the fact?

Mr. BECK. I have another question. Had those men acquired rights to those lands before this act of Congress was passed imposing on them this royalty?

Mr. VOORHEES. Undoubtedly.

Mr. BECK. Then, how is it possible that the courts can interfere if the miners took their lands subject to these conditions?

Mr. VOORHEES. I quite agree with the gentleman from Kentucky [Mr. BECK] in his intimation that legislation is required rather than a judicial interpretation of this law.

Mr. STEVENSON. I wish to ask a question. Does the act of Congress reserve the right of repeal or amendment?

Mr. DICKEY. And I would further ask what right have these squatters obtained?

Mr. SARGENT. The same rights as all the miners of the United States have, the same rights as have been recognized by this House, by passing a law during the past week authorizing a class of miners to prove up their claims and get a title from the United States.

Mr. STEVENSON. I desire an answer to my question from the gentleman from Indiana, [Mr. VOORHEES.]

Mr. VOORHEES. I yield to the gentleman from California, [Mr. SARGENT,] who is more familiar with the subject than I am.

The SPEAKER. The Chair would state that but two minutes are left of the time of the gentleman from California, [Mr. SARGENT.]

Mr. SARGENT. As I have but two minutes remaining, I have no time for argument. I will ask, therefore, that the report which I have prepared for the minority of the committee be printed in the Globe.

There was no objection; and it was so ordered.

Mr. FERRISS. Mr. Speaker, there seems to be a good deal of misunderstanding in regard to the facts bearing upon the question before the House. I have listened with pleasure, in one sense, to the eloquent gentleman from Nevada, [Mr. FITCH;] but I was much surprised at his perversion of the facts.

I at first thought that I would answer the equitable argument which the gentleman has presented to the House. But upon reflection I think it would be better at this stage of the discussion, as the debate must go over to the morning hour to-morrow, simply to state the facts in regard to the passage of this law, the third section of which it is sought to have repealed, referring to the agreement which has been mentioned, and also to a law of the Territory of Nevada passed about the same time.

The gentleman from Nevada [Mr. FITCH] talked about the right which the owners of these mines have acquired. Up to the passage of the Sutro tunnel act, as it is called, the third section of which gives a royalty to the constructors of the tunnel in case they drain the mines—up to that time there was no law upon the statute-book which gave any man in this country a right to one single foot of mining land, with the exception of a small quantity of lands in California, the right to which was acquired under the Mexican title, so called. In all other cases every occupier of every foot of the mineral lands was merely a squatter. All the title he had was a mere license, a mere privilege granted by the Government. What was the result of this? The miners among themselves, for the purpose of facilitating their own business, made their own codes, rules, and regulations. And in the absence of any legislation it became necessary in adjudicating on difficulties between them for the courts to pass upon those rules and regulations, which became in the process of time, and were so regarded by the courts of California and other mining States and Territories, as law for the time being. But, sir, so far as the title to all these lands is affected there was no law, either of the General Government or of the States or Territories, by which any person could acquire a title to a foot of these mining lands.

Well, sir, that was the condition of things when this Sutro tunnel bill was passed. It was passed on the 25th of July, 1866, and the day following we passed the first law that was passed by Congress giving anybody a right to acquire title to a foot of this land; so that at the time that the Sutro tunnel law was passed, which was one day previous to the passage of the general mining law, as it is called, Congress held every foot of mining land, and could impose just such conditions as it saw proper upon parties acquiring title to those mines. The Government owned the mines, and these parties were

mere squatters and were occupying the lands by the allowance of the Government. Mr. Sutro and his associates—and it is well to recur to the names of the trustees of the Sutro Tunnel Company, for some of them are familiar to members, and the first is William A. Stewart—were the parties named in the agreement referred to; but when the act was passed Mr. Sutro was named as the only grantee of this enormous privilege which the gentleman from Nevada [Mr. FITCH] has alluded to.

Now, sir, of the importance of this tunnel I have not time now to speak. It will be the subject of discussion before this bill is disposed of; but I will say that it is of a magnitude which gives it a national importance. The history of mining in all countries, not only in Europe, among the enlightened nations there, where mining has been carried to its utmost perfection, but in Mexico and everywhere else, has demonstrated this important fact, that mining at a great depth cannot be successfully and profitably carried on without the construction of deep adits or tunnels for draining and ventilating purposes. That is the history of mining the world over; and the importance and absolute necessity, in order to save these mines upon the Comstock lode from abandonment, of the construction of this tunnel has been demonstrated not only by the history of mining in other countries, but by the facts made apparent in regard to this very mining region.

In this act, which was passed, no allusion whatever was made to the contracts which the gentleman has referred to and which have been drawn in here as a sort of side issue, except in the third section, which simply provides, instead of saying that the miners whose mines are drained by this tunnel shall pay a royalty of two dollars a ton for every ton of ore taken out of their mines, that they shall pay the price agreed upon by the majority of the parties representing the mines upon this lode in the agreements which they have made with Mr. Sutro. It is simply another way of saying that they shall pay two dollars a ton royalty for every ton of ore taken out of the mines drained.

The gentleman from Nevada has talked about its being an oppression to the owners of these mines; he tells us that these mines below a certain depth are not troubled with water. Well, sir, I apprehend that the facts are entirely different, and that in California and Nevada, as in other sections of the country, water is to be found below the surface of the earth, and until they can find some other power better than gravitation to move heavy bodies they will never find a good substitute for tunnels to drain the mines. The man who discovers an improvement upon gravitation in drawing the water off will be the same fellow who expects to lift himself by tugging at his boot-straps. These mines, notwithstanding the assertion of the gentleman from Nevada, I am credibly informed by gentlemen who have been in them, are now many of them not filled with water, but partially filled with water, for the removal of which powerful engines are kept constantly in operation, and thus with the

utmost difficulty the water is kept out of the mines, so that they can be successfully worked.

Now, if this were simply a question of equity, to be determined upon the construction of the contracts, and if we were acting as a court to determine whether time is the essence of the contracts alluded to, it is idle to suppose for a single moment that the owners of these mines would not receive not only full value from the draining of the mines, but double and treble what they would pay for it. If these mines were drained by this tunnel, more than fifty engines that are now kept in operation for the purpose of pumping the water out, at an expense of twelve dollars a cord for wood for fuel, would be useless. But there is something more in this. If it were an original proposition to give Mr. Sutro the benefit of this royalty for the construction of this tunnel, notwithstanding the assertions of the gentleman who made the minority report, the Committee on Mines and Mining would report favorably upon it.

The SPEAKER. The morning hour has expired, and the bill goes over until to-morrow.

WEDNESDAY, *March* 23, 1870.

Mr. ALLISON. I call for the regular order of business.

The SPEAKER. The regular order having been called for, the morning hour will now commence, at twelve minutes past twelve o'clock. The first business in order during the morning hour to-day is the consideration of the bill (H. R. No. 1179) explanatory of the act of July 25, 1866, relating to the Sutro tunnel, upon which the Committee on Mines and Mining made an adverse report. Upon this question the gentleman from New York [Mr. FERRISS] is entitled to the floor for fifty minutes remaining of his hour.

Mr. FERRISS. I yield to my colleague on the committee, from Michigan, [Mr. STRICKLAND.]

The SPEAKER. For how long?

Mr. FERRISS. For ten minutes.

Mr. STRICKLAND. Mr. Speaker, the question which underlies this report is as to the propriety of the legislation of this House in 1866. The House then assumed to grant certain rights to Mr. Sutro and his assigns in relation to the construction of a tunnel, and it imposed certain restrictions and obligations upon the parties who should assume to work the mines or to take grants from the Government under or through which they should proceed down into the earth for the purpose of taking from it these precious metals. I suppose it will not be doubted for a moment that Congress has the power to make these grants. Then the only remaining question for consideration is as to its propriety. Ought we to-day to proceed to undo that which was then granted, done, and performed?

This minority report now under consideration assumes that this legislation changed contracts entered into by the mining companies on the one part and this man Sutro and his assigns on the other part. Now, sir, from this

conclusion I entirely differ, as do the committee to which the subject was referred. These contracts remain intact in every part. They are not infringed in the least. No right secured by the contracts to the miners is infringed in any way. They are there with all the rights they ever had. They have the same privileges given to them by the terms of the contracts just as though this legislation had never been enacted.

The only reference in this legislation to the contract is this, and it is worthy of consideration: it is referred to for the purpose of fixing the price to be paid, and nothing more. The contract between the parties assumed to say that the miners were willing to give, if the Sutro tunnel were constructed under the laws of Nevada, so much money. They had no reference whatever to this law of Congress. In the grant given to Sutro Congress said they should be under obligation to pay, when he arrived at a certain distance of the mines, such sum per ton as they had agreed by contract to pay. Can it be said for a moment this is unjust? If the power existed, here is a reason for the rule. The rule having been found in the admission of these parties it is now too late to come here and say to Congress, "You have gone too far. You have intruded upon our rights. You have taken from us that which belonged to us by the words of our contract." The answer is made that there is no such proposition in the legislation. It is merely to say you shall pay such a sum as soon as you are benefited. I say to gentlemen that their argument is fallacious when they undertake to say this proposition infringes any right in these parties, for the contract is as powerful as if the legislation had not been made. After the time has expired they have all the remedies under the contract.

This man Sutro had succeeded in having a portion of the stock subscribed and had gone to work to tunnel this mountain. He had proceeded but a few hundred feet when we find these parties coming here and asking this law to be abrogated. It is believed by many, and I believe with much truth, that this tunnel properly constructed will enable parties to take out of that mountain untold sums of wealth. It is idle for gentlemen to say this tunnel will not be beneficial for the purpose of drainage, because water goes down hill rather than up and requires power to take it out. These mining companies say that by an expenditure of money since this arrangement they have secured ventilation. But they have done it by the very plan which the promoters of this tunnel proposed, by making a tunnel from one mine to another; only that this will make a tunnel that will include every mine, that will reach them all without any difficulty. Now, the fallacies in this minority report I desire to point out in part, not in whole, for my time is limited. They say that the law as worded supersedes the contracts. The law only alludes to the contracts for the purpose of fixing the amount. It does not extend them in time; it does not limit them in fact. Therefore they stand as

they did before. I think this sufficient for that point.

The minority of the committee say that the mining owners do not ask to be relieved from the terms of their contracts. Certainly not. I concede that proposition, because they have their contracts, and as they made them they must abide them. If they are wise they will have the benefit of that wisdom. If they are improper; if they have made contracts that are oppressive, they must abide them so far as the contracts are concerned. But it is not to be presumed that this is the case, and it is strange that they should come to us and say that they made contracts which they cannot live by. There is no force in the argument that in 1866 this was all proper and right, and that in 1870 it was all improper and wrong. That kind of logic will not be accepted. There is no argument in it. It does not cover the ground that is assumed by the parties here. We must look for some other motive for this attempted legislation, and I think in this report we find a key to the reason why other legislation is sought. It is here said that these companies have constructed a railroad by which they can accomplish in part the results that were to be accomplished by this tunnel. Be it so; that was a matter of volition so far as they were concerned, and ought not, neither can it, justly affect what this House should do in regard to legislation.

It cannot in any sense affect the legislation which had preceded these acts. They went to work with their eyes open. They must have known the consequences and what is here alleged is a matter that they cannot urge here as a reason that we should go back upon the action of this House. They must come here with better arguments and must satisfy us that the original legislation was wrong. They have attempted to say it was wrong in this, that they did not understand it. I take it that we may say to gentlemen that they are hard pushed for arguments when they come to us and say they did not understand plain legislation. Will the gentlemen who represented the Pacific States at the time, some of whom represent those States in this House now, come to us and say that the legislation was not understood by them, and that it is found now to mean a different thing entirely from what they understood and intended it to mean? Very precarious must be their position when they assume this ground, and I take it it is their necessity and not their judgment which compels them to make this assumption. The law is plain, clear, and distinct. There can be no doubt about its construction, and I submit there can be no doubt about its propriety.

But, says the honorable gentleman who represents so ably the new and growing State of Nevada, Congress could not have intended to give such a monstrous franchise. How shall the gentleman determine the fact; first, that it is a monstrous franchise, and second, that Congress did not intend to do it. Congress have said in plain language what they did intend to do, and have done it. And I think it is for

the future to determine whether it is a monstrous franchise. The undertaking is a gigantic one, I confess; it is such a tunnel as the world has never yet known. And if it shall bore that mountain for six miles two thousand feet below the surface, revealing an amount of wealth which was never brought to light in this country before, it may well be considered a gigantic if not a monstrous project; and it will be very unjust in my judgment—and I trust the judgment of the House will also so determine—to stop this project in its incipient stages, when it is but commenced, by giving these parties the power to destroy it; to destroy an undertaking the most magnificent of any now in progress on this continent.

The only other point that need perhaps be answered, is—

[Here the hammer fell.]

Mr. FERRISS. I yield ten minutes to the gentleman from Indiana, [Mr. KERR.]

Mr. KERR. Mr. Speaker, after a careful examination of this question I have reached the conclusion that it is the duty of the House to leave the legislation on this subject as it now stands, and to deny the prayer of the minority of the committee. I am led to that conclusion, in the first place, by the reflection that this whole subject was referred very properly by this House to one of its most intelligent committees, consisting of nine gentlemen, eight of whom report to this House that this proposed legislation is not proper to be enacted; and the minority, consisting of only one member, asks its passage. In addition to that, my own judgment is that upon its merits this bill ought not to be passed. I think that in the original proposition there was nothing wrong, nothing unjust, nothing oppressive, nothing that in any of its characters and incidents is extraordinary, as is intimated by the honorable gentlemen on the other side. It is said that the old law organized a monopoly in Nevada. I do not understand that it does any such thing or brings about any such result. This tunnel idea stands upon a very common one in application to various other subjects throughout the country, and it is only by the name that is given to it in Nevada that the people are misled and do not understand just what it means. The country is everywhere familiar with various systems of ordinary sewerage and drainage in cities, towns, and the country. The obvious principles of law, of just and fair contributions for common advantages and benefits, on which they are maintained, are well understood. There is no character of monopoly or uncommon hardship about them.

Now, Mr. Speaker, the whole of this law consists in this simple proposition, that here is to be constructed a sewer, if you please, a drain that will inevitably benefit every owner whose property is in any way reached and drained and ventilated by it. In this city of Washington and in all the cities of this country it is a common practice to require the persons who derive advantage from the construction of such works to contribute to their construction originally and to their maintenance thereafter.

Mr. FITCH. Did the gentleman ever hear of a case where a sewer was constructed and the owners of property adjacent to that sewer were compelled to pay for it when none of them wanted the sewer and all of them opposed its construction?

Mr. KERR. I have heard of just such things. I have often heard of just such things in cities and sections of this country. I know of just such a thing in my own experience. But that is not this case, and therefore the gentleman's question has no pertinency to this case. This tunnel company was organized at the request of these miners, at the request of the Senators and Representatives from the State of Nevada, at the request of the Legislature of Nevada, at the request of the Governor of Nevada and of all the people of Nevada, in all the forms in which they could make their wishes known to Congress. I believe that this identical law that it is sought now to repeal was drafted by the hand of Senator STEWART, of Nevada, and that it was supported two or three years ago by the entire representation from the State.

Mr. FITCH. Will the gentleman permit a correction?

Mr. KERR. I will.

Mr. FITCH. I wish to state that the Legislature and people of Nevada petitioned Congress for a money subsidy for the building of a tunnel. They did not petition Congress to compel them to pay for it.

Mr. KERR. With great respect toward the gentleman from Nevada, I submit that that is an evasion. Whether they petitioned for the construction of the tunnel at their own expense or not it is very clear that they all wanted this tunnel. They believed it to be a good thing, and if they wanted it built at the expense of the people of the United States, and not at the expense of the people of Nevada, I do not think the people of Nevada gain much by that presentation of the case.

But it is very clear, Mr. Speaker, that while gentlemen say here that these people had a possessory right in this soil before this last law was passed, they utterly destroy the value that is in that position when they also say that the mines involved in this legislation have very great value, and that out of these mines these same miners have already extracted \$100,000,000 in precious metals. Now, if that be so it seems to me that for that shadowy, that unreal, that executory—it is not that much in law—that mere possessory claim of right, they have been most munificently paid, and ought not to come back here and ask for more. But a further answer to their position is found in the fact that when the original application to Congress was made these miners themselves went to work and executed these voluntary individual contracts with this tunnel company, by which they agreed, whenever the tunnel was constructed, to contribute these several sums to aid its construction and maintenance.

Mr. SARGENT. Will the gentleman yield to me for a question?

Mr. KERR. Yes, sir.

Mr. SARGENT. Does the gentleman know

how much it cost those miners to extract the \$100,000,000 of which he speaks?

Mr. KERR. I do not.

Mr. SARGENT. I will put the question in another form. Does not the gentleman know that it cost more than the \$100,000,000?

Mr. KERR. I do not know nor do I care what it cost, nor do I believe it cost them so much. This I know full well, that it cost them less than it was worth to them or they would not have dug those precious metals out of the earth; that I know. In addition to what I have said I desire to call attention to a further fact that under the law, which it is now desired to repeal, and under the contract which that law adopts, not one of these mining companies or individual miners is required to pay one farthing to this tunnel company in the way of royalty or anything else until the tunnel shall have been constructed and they shall have begun to derive advantage from it. In other words, the entire obligation is strictly reciprocal; its burdens and its benefits go together; they run constantly and perpetually in parallel lines. And the whole assumption, therefore, that there is oppression or injustice or monopoly in this matter strikes me as being very far-fetched and purely unfounded.

And further, it is assumed that the gentleman who is primarily interested as the representative of this tunnel company in resisting this proposed legislation has practiced a fraud on Congress—I believe that is the language used by the gentleman from Nevada, [Mr. FERRIS]—that he has procured to be practiced a fraud on Congress, and thus upon the people of Nevada. Now it appears to me that it is a sufficient answer to that allegation to say that if that legislation did involve any fraud the entire representation in Congress from the State of Nevada, the people of the State of Nevada, the Legislature of that State, were parties to that fraud, desiring to share the advantages to result from that fraud, and were parties to putting that fraud upon Congress.

[Here the hammer fell.]

The SPEAKER. The time of the gentleman has expired.

Mr. KERR. I would like a few moments more.

Mr. FERRIS. I will yield to the gentleman for five minutes longer.

Mr. KERR. It is also further alleged in reference to the general principle that Congress ought not to suffer this law to stand, because it is said that it is the policy of the Federal Government, in reference to property existing in the States of the Union, to allow the States themselves, without any interference on the part of the Federal Government, to go on and regulate all interests of this kind.

I cheerfully concede to the gentleman from Nevada [Mr. FERRIS] that there is much force in that proposition, and ordinarily that that principle controls my action as a member of this House on this kind of legislation; but my answer to that proposition here is that such a proposition of law or of public policy has no application at all to this case. And why? Because in this case, while this Comstock lode

was the exclusive property of the United States, before one acre or one rod or foot of it had been sold, this law was enacted, when Congress had exclusive title and jurisdiction over it, when Congress had the clear constitutional and moral right to legislate in this way. And when we remember also that this is mineral land, and comes within the general classification of mineral lands, of which we in the central and more eastern States of this Union know but little, the jurisdiction over it by Congress becomes still more clear and unquestionable.

Subsequent to this law of 1866 it was enacted by Congress that private individuals might go on and acquire title to this mining land by paying certain specific prices; but that in reference to all such titles they should take them burdened with the conditions indicated in the law previously enacted for the maintenance of this proposed tunnel, and to aid in the construction of this tunnel in the general interest of the development of the mining in that particular section of that State. These people went on and concluded their purchases, and obtained from the Federal Government their grants, each one containing in itself, as a distinct part and parcel of its covenants and obligations, this very condition, that the purchasers should contribute to the maintenance of this tunnel in the manner already stated. There is therefore to be worked upon them no hardship, no injustice, no result which can even be said to be morally inequitable or severe. But it is further true that every one of those miners, every one of the citizens of Nevada, every one of those representing that State in either branch of Congress, knew, when Mr. Sutro came here to obtain the passage of that law, that he was coming here to obtain such relief. They all desired him to obtain that kind of relief. They were, as I have stated, parties to the measure; and I think they ought now to be held as legally and equitably bound by it.

Mr. FERRIS. I now yield ten minutes to the gentleman from Pennsylvania, [Mr. Woodward.]

Mr. WOODWARD. When I came here in 1867 as a member of the Fortieth Congress, the then Speaker of the House placed me upon the Committee on Mines and Mining, and the question of this Sutro tunnel was, during that Congress, fully examined by that committee. I then for the first time made the acquaintance of Mr. Sutro. I then learned all that an intelligent man like Mr. Sutro could explain to a comparatively unintelligent committee in regard to the whole subject of tunneling the Rocky mountains. The immediate question before the committee at that time was whether the Government should pledge its faith to the extent of \$5,000,000 to this company in aid of the tunnel. A bill which was prepared for that purpose was referred to a sub-committee, of which I had the honor to be a member. I took the ground that the Government was not in a condition either to advance \$5,000,000 of money out of the Treasury or to pledge its faith for that amount. Hence, I was opposed to the

feature of the bill embracing that proposition. The majority of the sub-committee reported to the committee in favor of the bill; and a majority of the committee reported favorably to the House, my friend from Kentucky, [Mr. Knott,] the chairman of the committee, (Mr. Higby,) and myself being the only dissenters. On the final report to the House the committee stood six in favor of the bill and three against it.

That bill, so far as I know, never came up in the House. But, sir, Mr. Sutro at that time came before the committee with the indorsement of the Legislature of Nevada, with resolutions complimentary of himself, with a petition urging Congress in the most earnest terms to pledge the national faith in aid of this tunnel. The measure was pressed upon Congress, so far as it was pressed at all, by all the power that Nevada could concentrate in support of it. The law of 1866 had already been passed the year before; and this application of the Legislature of Nevada was founded upon the legislation of 1866.

Well, sir, yesterday we had an extraordinary spectacle on this floor, when the only Representative of the State of Nevada denounced that legislation in the most violent manner as improper and dishonest. The act of 1866 looked to the commencement of the greatest work of internal improvement that has ever been contemplated in the State of Nevada. It was legislation which was calculated to develop her mineral resources to a greater extent than anything else that has been proposed. This legislation was yesterday denounced on this floor by the Representative of the State of Nevada as dishonest and corrupt. Now, Mr. Speaker, I say that my eloquent friend from Nevada, in opposing this bill, manifestly does not represent the State of Nevada. He says that he does not represent the "bank ring." I do not know that anybody charges him with doing so. But he does not represent the State of Nevada, or else the documents which we had before our committee for a whole year were forgeries.

Mr. FITCH. Will the gentleman from Pennsylvania [Mr. Woodward] allow me to ask him a question?

Mr. WOODWARD. No, sir; I have no time to spare.

Mr. Speaker, this argument addressed to us by the Representative from Nevada founds itself on one single legal objection, to wit, that Mr. Sutro did not commence his tunnel within the time stipulated in the contracts with the companies. When the gentleman was urging this point, the gentleman from Ohio [Mr. Van Trump] put to him a most pregnant question, whether that was not a question for the courts rather than for Congress? Certainly, sir, it is a question for the courts. When these companies are called upon under their contracts let them take whatever advantage they can of this quibble. But then they will meet as one of the facts bearing on this question the telegrams that were sent to New York and to this city to hinder and delay the work beyond the time within which they themselves had stipu-

lated it should be commenced. Sutro was bound under the contract to commence his work in 1867. Owing to pecuniary embarrassments he wanted more time, as is so frequently the case with railroads and canals and all great works of internal improvement. He applied to these companies to give him more time. They agreed to extend his time one year, which would be until September, 1868. Before that year was up, to wit, in January—we have the telegram here before us—we find the representatives of these very companies—

Mr. FITCH. The gentleman, I hope, will yield for explanation. Only a few companies agreed to extend the time.

Mr. WOODWARD. As I am informed, the very companies who did agree, or some of them, joined in this telegram repudiating that extension, and that six months before the time had expired to which they had extended it. They complain, through their Representative upon this floor, that Mr. Sutro did not commence his work in time. I say when that question gets into the courts and becomes a judicial question these other facts will bear on this question, and the judge or chancellor will ask, if time is the essence of the contract, the other party, "How have you treated that question?" If it be found that they have thrown obstructions in the way of Mr. Sutro, prejudiced the money market against him, and embarrassed him at every step of his progress, the equity of this special technical defense will not be very impressive. There is not much in that. If this House is going to legislate on this judicial question I insist on it that these questions of fact which the gentleman intimates I have not stated correctly, bearing on the question whether time be the essence of the contract, shall be investigated by the House; that we shall go into them in order to act intelligently on this judicial question. But what is better is to defeat this bill, as the committee recommend us to do, and leave these parties under these contracts to their legal rights, as they shall be adjudicated in the courts.

Now, Mr. Speaker, if this law of 1866 had not been passed when we were deliberating on this subject in 1867, most assuredly that committee would have been almost unanimously in favor of such a law.

A word more. What is this law? The Government is lord paramount of these mineral lands; not only the lord paramount, but the political sovereign of the soil. Now, in Pennsylvania, from the earliest settlement of that State, the sovereign has always reserved to itself one fifth of all gold or silver at the pit's mouth.

The SPEAKER. The gentleman's time has expired.

Mr. WOODWARD. I should like to have five minutes more.

Mr. FERRISS. It is impossible for me to yield further, as my time has all been farmed out. I should otherwise be glad to yield to the gentleman.

Mr. GRISWOLD. I ask unanimous consent.

Mr. SARGENT. I object.

Mr. FERRISS. I yield now to the gentleman from Michigan.

Mr. BLAIR. Mr. Speaker, I have lying before me a joint memorial and resolutions, asking Government aid in the construction of the Sutro tunnel, adopted unanimously by both houses of the Legislature of Nevada January 25, 1870. The State had conferred corporate powers previously upon the Sutro Tunnel Company. It was contemplated that the company, requiring a vast amount of money for the accomplishment of its object, would need aid from the Government of the United States. The Legislature followed this up in the January following, and in this unanimous memorial we have it recited:

"Whereas the State of Nevada contains within its borders a silver vein called the Comstock lode; and whereas a deep drainage and exploring tunnel, leading into said lode, is necessary to its permanent yield of the precious metals; and whereas the character of said lode is now demonstrated to be such as to give ample security to the capital necessary to be advanced for its construction; and whereas the following facts in connection with the foregoing are of weighty consequence."

It concludes with the following resolution:

"Resolved by the Senate and Assembly of the State of Nevada, conjointly, That our Senators be instructed and our Representatives requested to use their best endeavors to obtain from Congress such material aid as will secure the speedy construction of the deep drainage and mining tunnel known as the Sutro tunnel."

Then there is a resolution requesting this may be sent to Congress. Moreover, Mr. Speaker, this whole subject had been referred by the Legislature to the committee on Federal relations, which made to that body a long, detailed, and careful report of the facts and arguments in favor of the tunnel, and they wind up with recommending that the proposed tunnel, a work of such magnitude and of such vast national importance, should have such substantial aid as will insure its being carried out.

Then, sir, upon Thursday, the 24th of January, 1867, I find this short resolution adopted by the Nevada senate:

"Resolved, That five hundred copies of the memorial and joint resolution in reference to the Sutro tunnel and the report of the committee on federal relations thereon be delivered to A. Sutro, for distribution at the seat of Government of the United States."

Now, sir, we heard only yesterday that Mr. Sutro was a lobbyist, and that he had defrauded Congress into the passage of a law which it should not have passed. But I find here that after the passage of this act the Legislature of the State of Nevada took this subject into careful consideration, unanimously resolved that the project was important both for the State and for the nation, and absolutely commissioned Mr. Sutro to come to Congress with five hundred copies of their memorial and report and resolution to lay before both Houses of Congress, and to ask them to give national aid and support to this great measure for the benefit of the State and the nation alike, which the Senators from that State at the other end of the Capitol and its Representative here were to urge upon Congress. And we who were here during the Fortieth

Congress all know with what persistency and energy that proposition was brought before the attention of both Houses. And I believe that if Congress had felt that under existing circumstances it could have afforded to have done this it would have done it in preference to the aiding of any other private enterprise whatsoever. Congress, however, did not feel that the situation of the national Treasury would allow this to be done.

And now, sir, when we are told here by the gentlemen professing to represent Nevada that they are here to very little purpose if they cannot turn aside the purpose of the committee and of the House upon this subject; that Nevada demands that this very act shall be repealed, or its most vital feature eliminated from it, I must confess I am astonished, the more so that I have been upon the ground and am somewhat conversant with the situation of things there. And I affirm here now that if the act on behalf of the Sutro tunnel project, as a new project, were pending here to-day it would not only have my voice and my vote, but my most active support.

Mr. SARGENT. Will the gentleman yield to me for a question?

Mr. BLAIR. I have not time.

Mr. SARGENT. Just a single question.

Mr. BLAIR. I yield to the gentleman.

Mr. SARGENT. The gentleman states that he has been on the ground. How much of a tunnel did he see?

Mr. BLAIR. The tunnel was not then begun. But when I was there I heard a very diligent discussion of the question. The gentleman whose name has been mentioned in this discussion, Mr. William Sharon, the agent of the Bank of California at the Comstock lode, took me in his buggy and carried me to his crushing mills, and showed me the line of the new railroad he was building, or rather had got the people to build for him. He took me to his mines, to the very bottom of them; showed me all about them, and told me he was determined this Sutro tunnel business should be stopped.

Now, sir, I will say to the gentleman that while I do not wish to arraign anybody here at all; while I received, as we all did, such courtesies from the Bank of California or its agents that it might be supposed our mouths might be pretty much shut against saying what perhaps ought to be said on this subject, yet all that occurred there did not blind our eyes to the fact that this is the most gigantic monopoly in the United States, that it dominates the whole Pacific coast, and that when it pipes in that country the people dance. And you may rest assured that that will be the case so long as that monopoly continues. It had power enough to thrust out your greenback currency from that entire coast. Not a dollar of it can be there used to-day in the ordinary business transactions of life, and it is owing to the immense power of the Bank of California that the Government has not been able to introduce it. The agents of the Government have informed me that they have tried diligently to

introduce the legal tender notes, but the bank had given its customers notice that if they undertook to deal in greenbacks they would not have the favor of the bank. The result was that they broke down everybody who undertook to do it; and to-day your currency is virtually excluded from the whole Pacific coast just because the Bank of California was determined that it should not circulate there.

Sir, this bank has waved its hand over the Comstock lode and ordered Sutro away. That is the whole of this transaction, as it seems to me. When the gentleman says there was any fraud in the passage of this act, I answer him that I am not aware of it; and certainly if there is likely to be any fraud perpetrated now it is not by Mr. Sutro, but by those who oppose him.

[Here the hammer fell.]

Mr. FERRISS. I now yield to my colleague upon the committee from Delaware [Mr. BIGGS] the remainder of my time except half a minute.

Mr. BIGGS. How much time have I?

The SPEAKER. Six minutes.

Mr. BIGGS. Mr. Speaker, as a member of the Committee on Mines and Mining I have given the bill which is now before the House some reflection, and I have come to the conclusion, with eight of my colleagues on that committee, that the bill ought not to pass. Only one member of the committee can be found to advocate its passage. It is true that the judgment of the eight members of the committee may perhaps be at fault; but I think if the House will carefully investigate the subject they will come to the conclusion that the bill is an outrage upon the rights of Mr. Sutro and his company.

One idea advanced here yesterday by the gentleman from Nevada [Mr. FITCH] I must confess struck me as rather strange, and that was that the Congress of the United States have permitted this humble individual to pass upon them an act of fraud. Sir, Mr. Sutro, in every effort which he undertook from the 4th day of February, 1865, until 1867, had the sanction and support of the people of the State of Nevada and its Representatives in Congress. Each and every one of them supported him in the measure, which he succeeded in by the passage of the bill of July, 1836. But it was urged yesterday by the honorable gentleman from California [Mr. SARGENT] that Sutro had not lived up to his contract. Mr. Speaker, why did he not? Because a most determined opposition had suddenly sprung up on the Pacific coast against Mr. Sutro and his tunnel company. His prospects for success were so flattering that the mining companies became alarmed, and publicly repudiated their former subscriptions to the Sutro Tunnel Company. In July, 1867, the Savage Mining Company repudiated their subscription to the Sutro Tunnel Company, and the Bank of California, through their agents in New York city, Messrs. Lees & Waller, placed in their office the following:

"That the stockholders of the Savage company,

at their annual meeting, had refused to ratify the subscription made by their trustees of \$150,000 to the stock of the Sutro Tunnel Company, and that the same was utterly null and void."

Here, then, we see one of the leading mining companies repudiating a subscription which they had made in good faith, the effect of which was to throw a damper upon the whole enterprise. But this company was not alone, for on the 15th day of January, 1868, was sent to Washington the following telegram:

VIRGINIA, NEVADA. January 15, 1868.

Received at Willard's Hotel, Washington, D. C., January 16, 1868.

To Hon. WILLIAM M. STEWART and JAMES W. NYE:

We are opposed to the Sutro tunnel project, and desire it defeated if possible.

WILLIAM SHARON,

CHARLES BONNER,

Superintendent Savage Company.

B. F. SHERWOOD,

President Central Company.

JOHN B. WINTERS,

President Yellow Jacket Company.

JOHN P. JONES,

Superintendent Kentucky Company.

J. W. MACKEY,

Superintendent Bullion Company.

THOMAS G. TAYLOR,

President Alpha and Superintendent Crown

Point and Best and Belcher Companies.

F. A. TRITTLE,

President Belcher Company.

ISAAC L. REQUA,

Superintendent Chollar-Potosi Company.

Now we see, sir, the very superintendents of the mining companies who had subscribed, together with private individuals, the aggregate sum of \$600,000 toward the construction of this tunnel telegraph to the Senators from Nevada that they are opposed to the Sutro tunnel, that they want it defeated, and that they repudiate their subscriptions. How, then, could Mr. Sutro go on with his tunnel? He was not a man possessed of great fortune. He had raised the amount of \$600,000, and these very identical men who had subscribed for the purpose of constructing the tunnel turned round and telegraphed to Senators STEWART and NYE—the former of whom was actually in 1865 the president of the Sutro Tunnel Company—that they did not want the tunnel and wished it defeated.

Now, Mr. Speaker, if there is anything wrong under the act of 1866 let the parties aggrieved go to the courts of Nevada and try the question, as the honorable gentleman from Pennsylvania [Mr. WOODWARD] said, and not ask us to pass a bill repealing an act which was sustained and supported not only by the representatives of Nevada in Congress, but by the people of that State.

[Here the hammer fell.]

Mr. FERRISS. I now move the previous question.

The previous question was seconded and the main question ordered, being upon ordering the bill to be engrossed and read a third time.

Mr. FERRISS. I rise to close debate, and I will yield twenty-five minutes to the minority of the committee to dispose of as it sees fit.

Mr. SARGENT. Mr. Speaker, I must confess that the campaign against this bill has been carried on remarkably well, and as a matter of art I desire to give it full credit; whether

in the circulation of illuminated maps or gilded literature, or the assignment of parts to gentlemen upon this floor; whether by the ordinary machinery of legislation or of lobbying, everything has been attended to in such a manner as to meet my unqualified admiration.

Now, sir, I am taunted by the gentleman from Indiana [Mr. KERR] with standing here alone as a minority of one of a certain committee. I will remind that gentleman that I stand here also as in a minority of one on that committee from any State or Territory wherein there is a gold or silver mine. Probably not another member of the Committee on Mines and Mining ever saw a gold or silver mine, unless it may have been during the past summer, during such a fugitive, hasty visit as that made by the gentleman from Michigan, [Mr. BLAIR.] Upon the strength of three or four hours spent in Carson City and Salt Lake City that gentleman now assumes to speak *ex cathedra*, to instruct men who have lived there for twenty years, and to brush aside the assertions and representations made upon our responsibility here as members as matters of no account in comparison with his superior observation and information.

It seems to me that ordinarily committees are made up with some regard to the fitness of its members, to their former pursuits or investigations, so that they may be enabled to understand the kind of legislation which may come before them for their consideration. The Committee on the Judiciary is made up of lawyers, and able lawyers, too. The Committee on Agriculture is composed of members who live in agricultural districts and have some especial knowledge upon that subject.

In regard to the Committee on Mines and Mining, I desire to speak with all courtesy of my associates on that committee; our relations have always been most courteous. But I wish to say that the chairman of the committee, [Mr. FERRISS,] in whose hands has been placed the duty of protecting the interests of the miners of the United States, numbering hundreds of thousands of our citizens, who under the policy of our Government have expended hundreds of millions of dollars in the development of mines—the chairman had so little regard for this large industrial class of our population that yesterday he stigmatized them as “squatters” upon the public lands. Suppose the chairman of the Judiciary Committee should declare all lawyers knaves, or the chairman of the Committee on Patents abuse all inventors, what would be thought of his fitness for his place or sympathy with the interest confided to him? If there is one term more than another which is opprobrious to our people, one term that would be distasteful to the western settler, whether preëmptionist, homestead settler, or miner, it is the term “squatter.” It is a term which we use to express our contempt for those men who encroach upon the property of their neighbors, who refuse to work for themselves, but, in mining parlance, “jump” the lands which others have improved.

Sir, these “squatters,” as the gentleman calls them, are the people who come here with their voluminous petitions and ask justice at the hands of Congress. It may be that my residence there for twenty years, my knowledge of the men who signed those petitions, may have worked upon me unduly to induce me to listen to their prayer. But I say that I am not chargeable with any impropriety in standing up here alone, as a minority of one from a committee of nine members, and asking that their prayer be granted, without saying anything which would reflect upon that committee; I may say this at least, that the opinions of no individual member of that committee, or of several of them, should be allowed to overpower the opinions of the Representatives from the Pacific coast upon a mining question. If any one of them ever saw a gold or silver mine in his life let him now speak.

The gentleman from New York [Mr. FERRISS] also said that the people of Nevada desired this legislation. I say that is an error which may betray this House into a wrong vote upon this bill. The people of Nevada desired, if Sutro could come to Congress and procure an appropriation and grant of a right of way, that such aid should be granted to him by Congress. With the idea that the tunnel could be finished in three years, and they thereby would be saved a very large expense, which otherwise they would be compelled to go to themselves, they signed certain contracts to him and made certain subscriptions. But afterward those subscriptions were withdrawn, when they had found out more about this Adolph Sutro, when they came to understand him as a mere adventurer from whom they had no reason to expect the completion of a tunnel.

Mr. KERR. I desire to ask the gentleman a question.

Mr. SARGENT. I will yield for a question simply.

Mr. KERR. Does the gentleman by what he has said mean to have this House understand that at the time the law of 1866 was passed both the Senators and the Representative in Congress from Nevada misrepresented their constituents?

Mr. SARGENT. No, sir; not at all; there is just the error into which the gentleman falls; and I do not wish him to remain in that error or to betray the House into it. I believe that Adolph Sutro himself and the Nevada Senators placed a different construction on that law from that which Sutro put upon it in October last, and which induced these mining companies to consult their lawyers to ascertain whether that was the true construction of the statute. The original law was understood by the Nevada Senators and by Sutro himself as confirming certain contracts. The construction now contended for is that it annuls certain contracts so far as Sutro himself is concerned, while giving him the benefit of the royalty. This I would say in reply to the gentleman from Pennsylvania. [Mr. WOODWARD,] is the reason why this question cannot go to the courts. As was said by the chairman

of the committee, although in terms which I do not like to use with regard to so large a body of our citizens, these men have now and had at the time of the passage of the law nothing more than a mere possessory title to these mines. The United States could fix any condition it saw fit upon the continuance of their possession. Congress could require the miners to give half of their gross earnings to the public Treasury, or to Mr. Sutro, or to any other man whatever. There was no power of resistance on their part to any such conditions or any other. If Congress saw fit to impose any such requirements, however hard, as a condition of the patents, it was not a legal question which the courts could reach, because no one can doubt the power of the United States to impose such conditions. The courts cannot grant relief.

It was understood when the law was originally passed that this royalty was dependent upon the performance of the contract; but recently, in October last, when this man Sutro published an advertisement for the sale of his stock (and this tunnel scheme is a stock-jobbing operation and nothing else) he for the first time claimed that he was entitled to this royalty, although the time had long gone by within which he should have commenced his tunnel and he had not commenced it, and although these miners themselves had built by large subscriptions a railroad costing \$1,500,000 for the purpose of transporting their ore to the mills, and had also incurred great expense in the erection of hoisting machinery and other appliances which dispense entirely with any necessity which there may ever have been for this tunnel.

I submit, sir, that unless Congress will now declare by an act of legislation that the contracts shall be binding according to their original intention there is nothing for the courts to do if this question should be brought before them, except to decide that Congress had the power to impose these conditions in the grant to those miners, however aggravating or unjust.

Now, Mr. Speaker, I want to say a word with regard to this terrible shadow, the Bank of California. In the first place, I scarcely know one of its officers by sight; I never have had any business connection with the institution or its officers in any shape. I have never received any favors from them in any way, and never expect to receive any. But I will say that every scoundrel who comes to Washington with a scheme that he wants to get through Congress abuses the Bank of California as the best capital toward carrying his project. This has become a great scandal and offense. Furthermore, I do not think it looks well for gentlemen on this floor to have these things in their mouths when they confess that they have accepted the hospitality of the managers of the Bank of California, (hospitality never accepted by me;) that they have sat at the tables of those gentlemen, ridden in their carriages, become the confidants of their plans, like the gentleman from Michigan, [Mr. BLAIR,] and then assume to reveal those plans and denounce their authors. Our people may soon look askance at distinguished visitors. The propriety of such

conduct is, however, a matter of taste, and I am no gentleman's censor. I will only say that William C. Ralston, of San Francisco, president of the bank, and Mills, of Sacramento, one of its chief directors, gentlemen of princely fortune and hospitality, may relish the good opinion of their late guests.

But common justice compels me to repel the misstatements of superficial prejudice. For instance, the gentleman asserted that the efforts of the Bank of California prevented the adoption of greenbacks in California. This was not so. The amendment of our practice act, which authorized a judgment to follow the contract and be payable in the kind of money promised, was passed long before the Bank of California was organized; and this was all the act of the State in regard to the matter, and controlled and expressed its policy. The Supreme Court of the United States has since recognized this as proper, and such is the better legal opinion. It was not dictated by want of patriotism, for no people were more patriotic during the war than Californians. At any rate the Bank of California had no existence when the financial policy of the State in this matter was determined.

So far as regards the bank's influence or attempt at influence in Washington, I will say that for more than a year past, while I have been here, I have never seen or heard of any agent of that institution here. I have never seen in the Washington papers articles emanating from them or dictated by them or in their interest; while I have seen, from week to week and from day to day, articles filled with outpourings against the Bank of California, some from this fellow, Sutro, and some from other schemers. But let me ask, as a matter of justice, this question: suppose that the Bank of California owned some of the stock of this company; suppose it has interests there; are you therefore to refuse justice because you do justice to them? I would not argue a proposition like that; and yet it seems that is all there is of these assaults on that institution here.

Now, Mr. Speaker, I beg of the House that a dispassionate view may be taken of this subject. I have not brought this measure forward. I am not interested in it. It does not affect my State; but as a member of the committee to which the House referred it I gave it a careful and patient examination. I have found myself, somewhat to my surprise, in a minority of one of the committee, by some means I could not clearly understand from anything apparently warranting it in the discussions before the committee. It seemed to me that arguments were made in the matter which I never heard; that arguments were made to the members of the committee elsewhere than in the committee-room. I found myself suddenly alone. Then, as a clear, cold, legal proposition, I sat myself down to write my judgment on the matter, and published it in the form of a report. That is my whole connection with the case, and I am as dispassionate as any one in the matter. I say if Congress thinks it right to give this,

which was never intended to be given to Adolph Sutro, I cannot resist the will of Congress; but if, on the other hand, those great companies of miners which sustain two large cities, who have by their industry and energy developed that great ledge to the extent it has been developed, and who come here and beg of this Congress to give them the relief which they cannot have from the courts—I say if they are worthy of consideration by Congress, then all I ask of the House is that they may have justice, and not because one man may be here begging in his own interest, as he has been for several years past, and urging it personally upon members of Congress, that the voice of one hundred thousand men in their distant homes shall be prevented from being heard.

I yield now five minutes to my colleague, [Mr. AXTELL.]

Mr. AXTELL. Mr. Speaker, I shall not attempt to express any opinion whatever in relation to the usefulness of this Sutro tunnel. How far a tunnel running to a mountain can benefit claims which lie a half or three quarters of a mile distant is a question to be answered by miners, and I agree entirely with the view, so far as the statement is concerned, of the gentleman from Indiana, [Mr. KERR,] that this matter has passed into the history of this House that Nevada at the time she asked for this tunnel thought it would do a great deal of good in developing the main ledge of the country. When Mr. Sutro came here asking Congress for the right of way and the right to such lodes as he might prospect or discover in running the tunnel, and the right of entering certain timber lands, I was heartily desirous that he should get those rights. In addition to that, and in order to reimburse him for the expense of making that tunnel, he entered into agreement with those who were considered the owners of the mines. It is true, in one sense of the word, the fee-simple or title was in the United States; but these men who had gone on and discovered the mines, who had prospected them, were treated by Congress, treated by the United States, treated everywhere as the owners, treated as men who had done a meritorious thing in going out and discovering and developing these mines.

The question was how far these miners or owners should be compelled to pay for this great work, or whether Congress intends to compel them to pay two dollars a ton independent of any agreement they should make. It is stated by the chairman of the committee that Congress had the right to do so. Is it or was it the intention of Congress to compel them to do this thing, before they can have their right to compel them to pay two dollars for using this work? They entered into agreements with Mr. Sutro, and those agreements had conditions. Does Congress intend they shall pay independent of these agreements? All that the bill of the minority asks is that those agreements shall be kept according to their terms and according to their conditions. The argument here is that they shall pay this man independent of their agreement. It is a

forced contribution of men who are owners of certain property to pay for a work not according to the agreements which they signed. It is requiring them to pay for the work whether they desire it or not. Now, all that we ask, all that the bill of the minority of the committee now before the House asks, is that Congress shall say, before we go into the courts, that we shall only be compelled to pay according to the terms of our agreement. We ask that Congress shall not exercise its power, because it holds the fee-simple of the ground to compel those men to pay two dollars a ton. If you can do that you could compel them to pay ten dollars or forty dollars a ton, or to give up their mines; if you have the power to do the one thing you have the power to do the other. The act says that it shall be the condition of the patent being issued that these parties shall pay the two dollars a ton irrespective of the agreements then entered into. That we desire to have changed by this bill, and that is all we desire to have changed.

[Here the hammer fell.]

Mr. SARGENT. There is another point to which my attention has been called on which I desire to make a remark. And that is whether Mr. Sutro himself knew at the time when the original law was passed that it did not bear the construction now claimed for it by himself. The acts and declarations of Mr. Sutro himself are the best evidence on that point. The law was passed in 1866. It affirmed certain contracts which were then existing. Those contracts were to expire in 1867, the time for commencing the work. Now, Mr. Sutro went to those mining companies—this is admitted on all hands—before the expiration of those contracts, but after the law was passed, and represented to them that it was absolutely vital to himself and to his success that those contracts should be renewed. Some few of the companies renewed them. Most of them refused to do it. Now, if he had under the law a perpetual royalty upon the claims of the miners conferred by the law itself and not by the contracts, then there was no necessity for him to go and try to get an extension of the contracts. On the other hand, if his right depended only upon the contracts why, then, of course it was necessary for him to get them extended. Now, he went upon the theory that his rights depended solely upon the contracts, and that he took nothing by this law except in accordance with them. He thereby showed that he himself, the promoter of the law, at whose request it was passed, understood that he held only by the contracts, and did not claim this construction. And this same explanation of course would apply to those who at his request voted for the law. I have been informed by gentlemen who were on the former Committee on Mines and Mining that when this bill was considered before that committee the question was discussed whether he held under the contracts or under the law; and it was entirely disclaimed that he held anything by law, except as affirming those contracts and according to their terms.

Now, that being the case, it is inequitable, as I have contended before, to come in at this late day, when he has broken every one of his covenants and forfeited his contracts, and elaim that Congress can make this immense, and, so far as the miners are concerned, this useless tax upon their resourees, for the benefit of Sutro and his assigns, for a tunnel which does them no good, and which their own explorations and facilities for transportation and drainage have done away all neecessity for. Sutro came here, not according to his contracts, to get a subsidy. There is nothing said in those contracts about his getting a Government subsidy of \$10,000,000 or \$5,000,000. He was to get subscribed by *bona fide* subscribers a sum of \$3,000,000 the first year. He was to sink shafts at different points, and drift each way. Yet none of these had he ever effected or commenced when he claimed this construction. He came away and abandoned the work and did nothing toward it. And then the companies, having their patience worn out, and believing Sutro to be an adventurer, telegraphed here that they did not desire anything to be done. Then they retired from the position into which as they thought he had entrapped them. Most of them refused to give further aid to his project; and they were compelled to do the work themselves, and have done it. They have done the work, not by constructing a tunnel, but by building a railroad; and the only difference is that the ore is transported to the mills over the surface of the ground instead of through the bowels of the earth. The tunnel could have no employment in transportation if completed. It is not necessary for ventilation, as those know who have penetrated further into the shafts of the Comstock lode than the nerves of the member from Pennsylvania [Mr. KELLEY] permitted him to do. As for drainage—

[Here the hammer fell.]

Mr. FERRISS. I yield now for ten minutes to the gentleman from Pennsylvania, [Mr. KELLEY.]

Mr. KELLEY. I think that the proposition of the minority of the committee presents to the consideration of this House as gigantic a wrong as ever was submitted to the American Congress. Two years ago every Representative from the Pacific coast agreed with the men who are now attempting to destroy his character and to rob him of his rights, in thanking Adolph Sutro for the very characteristics which they now present to the House in order to brand him with odium. They thanked him for his foresight and energy. They lauded his genius and the perseverance he manifested in their interests and in the interests of that young and growing section of the country, the Pacific slope.

Sir, Adolph Sutro's name will live when we who are legislating upon this subject shall be forgotten, or known only to some student of parliamentary history. In the volume which I hold in my hand, "The Mineral Resources of the United States, and the Necessity of Inaugurating a National System of Mining with Special

Reference to the Comstock Lode and the Sutro Tunnel," his name is embalmed by the miners and people of the State of Nevada and of the Pacific coast, and associated with the most eminent men of genius on the continent of Europe. He has won his immortality in the service of the men who are now endeavoring to strip him of his pecuniary reward and his honors, and to associate his name historically with that of Eli Whitney, as a man who, having added to the wealth, the comfort, the prosperity of the American people, was doomed to exhaust his life and die in poverty.

Adolph Sutro, by his correspondence, his publications, and his travels, has made the resources of Nevada and the Pacific slope known to the miners of Europe, from the most illustrious engineers down to the humblest miner in the drifts and galleries. He told them of the inexhaustible wealth of the Comstock lode and the great and diverse mineral deposits of the Pacific coast. He raised our credit by showing that in that one deposit, the Comstock lode, we had more silver than had ever been found in a single deposit in any part of the world. He showed the capitalists of the continent that these resources were being developed, and he brought back from them the teachings of experience, indorsed by the greatest names of the scientific world, saying to the American people that until they make a tunnel such as Mr. Sutro proposes their silver mining, is what is known in other countries as miners' piracy, or piratical mining. Under the present imperfect and costly system of mining we are taking from the Comstock lode only the richest ores, those that can be profitably hoisted one thousand feet and more by steam, in a land where fuel is so scarce that it is gathered miles away and transported upon mules' backs. We are thus wasting and worse than wasting the wealth of our country by our expensive mining. I cannot, of course, in ten minutes proceed further in this line of remark.

Gentlemen on the other side have spoken for the owners of mines. I propose to speak for the miners, the men who with pick and shovel extract the ore, and forty-five per cent. of whom die of miners' consumption, which seizes them and penetrates their vitals before they are admonished of its approach, and who die in their youth, or in the vigor of their young manhood, prostrated by the heat and poisoned by the atmosphere of these mines. These industrious men are subscribing to stock in the Sutro Tunnel Company; they swarm behind Mr. Sutro, and beg Congress to vest all the rights in him that will enable him to redeem them from the terrible doom to which the so-called miners' friends would still condemn them.

Sir, I brought with me from one of these mines a bit of blackened ore, blackened by the smoke of a fire that smothered and burned forty-five of these men in the mine. Had there been a tunnel such as Mr. Sutro is constructing they would have been breathing pure air while at work; and though the lumber of the mine might have burned, the miners could have dropped below the fire and escaped. It is

essential to the lives of the miners that better arrangements in the mines on the Pacific coast and in the coal mines of my own State should be made, and our Legislature is perfecting a law to compel their construction. This is not a local question; it is a national question. The State of Nevada invested Mr. Sutro with authority and arguments with which to present it to the country as a national question, and to assure the country that in applying its funds to promote the completion of this great work it was promoting the interests of the whole country.

The bill proposed by the minority of the committee is an attempt on the part of a few capitalists to avail themselves not only of the past labors of Mr. Sutro, but to blot his name out from any connection with the construction of the great work of which he was the enlightened projector, and to possess themselves of the very bodies of the working miners. If it be adopted they will say to the United States, "When you will give us your credit to build this tunnel we will let you have the advantage of your own silver." There is no title in these men other than that of possession. The Government of the United States, as a matter of economy and wisdom, if individual enterprise were not doing it, might construct this tunnel; and will any gentleman say that if it did it could not impose terms upon those who might avail themselves of it and be benefited by it? And granting the right to Mr. Sutro and his associates, can it not say, "In view of your executing this great enterprise we will guaranty to you remunerative tolls from those who may find it to their advantage to use it?" There is really no question on this point. But assuming the truth of all that has been said on the other side, and admitting that the bill involves a question of rights, it is a question of law that can better be decided in the courts of the country than on this floor, amid the excitement and under the influences that are pressing upon us. If there be a question, which I again protest there is not; but if there be a question of title or of right it is a question for judicial and not for congressional decision.

[Here the hammer fell.]

Mr. FERRISS. I had promised small portions of my time to several gentlemen who are not in their seats. I will therefore proceed now to close the debate.

The gentleman from California [Mr. SARGENT] takes exception to a term which I made use of yesterday, or rather to a single word. He says that the term "squatter" is understood by the miners of California as a term contemptuous in its character, signifying a contempt for the one to whom it is applied. If such is the understanding of the California miners, or of the gentleman from California, I will withdraw the offensive word. But the great lexicographer, Webster, who is recognized as authority upon all such questions, I believe, gives as the definition of the word "squatter," "one who settles on new land, particularly on public land, without a title." I used the term in its legal sense. I intended to express by it that meaning exactly and nothing more. But

if the word is so objectionable to the gentleman from California, [Mr. SARGENT,] I will withdraw it and substitute in its place the definition given by Webster.

I took occasion to say yesterday that at the time of the passage of this Sutro tunnel act, so called, the title to all these mines was in the United States; that there was no law at that time upon the statute-book in pursuance of which the miners who were in possession of those mining lands could obtain any title whatever to them. But subsequently to the passage of the Sutro tunnel act, the third section of which it is now sought to repeal, a law was passed which made provision by which persons occupying mineral lands could obtain from the United States titles therefor. Now, sir, these were the facts: that the title to all those mining lands was then in the United States, and that these miners were occupying the lands by the mere license of the Government, without any title whatever.

I am now brought to the consideration of the question which I promised the gentleman from Pennsylvania [Mr. WOODWARD] I would present to the House. The question, then, presents itself, if in view of a grant of this character, or in view of the project of constructing a tunnel of the character of this Sutro tunnel, what should the Government do? What rights should it reserve? And what would be equitable and just? The Government of the United States stands in the position of sovereign. It is granting these titles to men who are in possession of these lands without titles, who knew when they went on the land that they had no title to it, and who knew when they went there that their possession must be subject to the future action of Congress.

If this tunnel is indispensably necessary for the development of these great and valuable mines then it ought to be constructed. What ought the Government to do? Suppose the Government, instead of granting to one individual the right to build this tunnel, had itself entered upon the project. Suppose this law was blotted from the statute-book, and suppose it were proposed here in Congress to enact a law for the construction of this tunnel by the Government of the United States. Should there be no compensation to the Government from the men benefited by it? Should there be no royalty imposed? Why, sir, the mere statement of the question shows the absurdity of the position of those gentlemen who hold the opposite doctrine. It is the right of the sovereign power to impose in such a grant such conditions as it deems fit. These men in occupying this land knew that they took it subject to such legislation as Congress might adopt. And, sir, if the proposition to build this tunnel were now presented for the first time, I do not believe that any man on this floor would say that these men should enjoy all the benefits of it without contributing anything to the Government. But the Government does not enter upon such projects. It leaves them to private enterprise; and in pursuance of that policy this law was enacted.

Mr. PERCE. When this law was enacted was it not supposed to be in conformity with the contracts which had been made between the miners and Mr. Sutro?

Mr. FERRISS. I was just about to remark that this is one of the simplest statutes that ever was drawn. Nothing could be clearer in its terms; and it is impeaching the intelligence and integrity of the distinguished men who represented the State of Nevada on this floor and at the other end of the Capitol to suppose that the law could have found its way on the statute-book without their fully understanding its provisions.

I shall, before closing my argument, refer to the contract and show how unfounded is the position of those gentlemen who propose here to repeal the third section of this Sutro tunnel act. I say that Mr. Sutro has not violated any of the fundamental conditions of the contract. If he had done so, if time were of the essence of the contract, a sufficient answer upon that point has already been given upon this floor. It has been satisfactorily shown why he did not conform to the provisions of the contract which required him to procure subscriptions to the amount of \$3,000,000 by the 1st of August, with \$300,000 paid in to commence the work. The very men who procured the extension of that contract, long before the time had expired, exerted themselves to defeat its execution by Mr. Sutro. The telegram which has been read here directed to Hon. WILLIAM M. STEWART and Hon. JAMES W. NYE, demonstrates the want of faith with which these men act and their assurance in charging that Mr. Sutro did not fulfill the contract in accordance with its terms and ought not to have the benefit of it.

I do not know but I would be justified in calling attention to the fact that some men who have the privileges of this floor are presenting themselves under most unbecoming circumstances, endeavoring to induce this body to undo what they induced it to do four years ago. I think I am not violating the proprieties of the House in calling attention to that fact. I do not suppose that any man on this floor is verdant enough to believe that the men who were instrumental in framing that act did not understand its provisions. The idea that this man Sutro, who is no lawyer, perpetrated a fraud, in the framing of the act, upon members of this House, lawyers of distinguished ability and legal acumen, is so absurd that it can, I think, meet with no favor in the opinion of this body.

Now, sir, I wish to call attention to this contract. I have said that Mr. Sutro has not violated any of its provisions. Even conceding the position of gentlemen on the other side that by the terms of this law Mr. Sutro was to carry out all the provisions of that contract, what are they? The third section provides, as I have already said, that Mr. Sutro shall raise subscriptions to a certain amount and shall begin the work. And when the gentleman tells us that time is the essence of this contract, I desire to call the attention of those upon the floor of the legal profession to the two sec-

tions of the contract which I now propose to read:

"ART. V. The parties of the first part further covenant and agree that in the event they shall fail in obtaining subscriptions for the sum of \$3,000,000, or if the sum of \$300,000 shall not have been actually paid in cash, as hereinbefore agreed, on the said 1st day of August, 1867, then the said parties of the first part shall and will, if the party of the second part desire it, sell and convey within six months thereafter, the said franchise granted to A. Sutro by said act of the Legislature of the State of Nevada, of February 4, 1855, and also three hundred and twenty acres of land at and including the mouth of said tunnel, to be selected by the purchasers in one body, and in a square or rectangular form, and if the latter the length not to exceed twice the width, to the said parties of the second part, and to the other mining companies which have entered or shall enter into like contracts with the said parties of the first part, and shall join in the purchase for the sum or price of \$100,000, each company paying thereof its *pro rata*, according to the number of feet of ground owned by each.

"ART. XI. The parties of the first part further agree that the prosecution of said work shall be as diligent and vigorous as the circumstances and the nature of the work will allow, and that the completion thereof shall not be unreasonably delayed."

Mr. SARGENT. I ask the gentleman from New York to yield to me for a moment.

Mr. FERRISS. Certainly.

Mr. SARGENT. I wish to inquire if the gentleman made any remark in regard to Senators being on the floor of the House?

Mr. FERRISS. I stated that gentlemen were on the floor of the House.

Mr. SARGENT. Did the gentleman mean to cast any reflection upon these Senators for being on the floor of the House?

Mr. FERRISS. I do not mean to cast any reflection upon anybody.

Mr. SARGENT. The Senators show us uniform courtesy on their floor, and I desire that the same courtesy be extended to them here.

Mr. FERRISS. Now, sir, in case this work is commenced at the time specified the privilege is provided in this contract that if the parties of the second part so elect they may purchase of Mr. Sutro the rights granted for \$100,000 at any time within six months after the failure to procure subscriptions of this money. Yet gentlemen tell us time is the essence of this contract!

There is another thing in connection with this matter. By the terms of that contract Mr. Sutro has yet over twelve years, providing the work does not cost over \$3,000,000, as supposed at the time the contracts were made to complete the work. This contract requires that he shall expend \$400,000 the first year, and thereafter \$200,000 a year at least. This, sir, if it costs \$3,000,000, will give him fourteen years to build the tunnel; and if it costs \$6,000,000, which is more likely, will give him twenty-eight years. Yet gentlemen talk about time being the essence of this contract! The purpose of the repeal of the Sutro tunnel act—I call it repeal because the effect of the act "to repeal and modify" is practically to repeal the section indicated—is to drive this man away from the franchise granted him by law, now that he has commenced in good faith this important work. As soon as these men see that the work is going on, when they see that the work is

progressing, when they see that a valuable lode may be struck by the tunnel long before it reaches the Comstock lode, when they see the probability that capitalists will invest their money, they say to Congress that we shall stop this work which Congress authorized at their request. The character of this man, Sutro, has been impugned upon this floor. I respectfully submit no gentleman who has been so long about Congress as he has conducted himself with more propriety than Mr. Sutro. They charge him with being an adventurer. They cannot charge him with being an adventurer and at the same time with having means and property for the purpose of bribing Congress.

Repeal this law, strike out that section—they call it explanatory—and it is taking the heart out of it; it is leaving nothing but the empty carcass. Repeal it at once, and what do you find? Why, sir, the gentleman from California has told us in his minority report that when the owners of the mines desire them to be drained they will do it, and that, too, without any law of Congress. Ah! does the gentleman suppose that they can build that tunnel and get the right of way without a law of Congress? Perhaps they may do those things over in California. Under all other circumstances, unless the power of the nation is thrown on their side, the power of corporations is so great and so overshadowing that poor and humble individuals have to give way before them. But I apprehend they never will build that tunnel until they get a grant from Congress. Take away these rights from Mr. Sutro, and what will be the result? It may not be during this Congress; with all their assurance these parties would not have the face, after all they have said, to come and ask this Congress to grant them the privilege of constructing this tunnel with certain rights; but when next Congress assembles you will have their representatives at your door setting forth, what is true, that there is an absolute necessity for the construction of this tunnel, otherwise the mines will become useless and the Government will lose the revenue derived from them. And they will ask a grant from Congress, not with the limited rights attached to this grant to Mr. Sutro, but they will ask double and treble what is attached to this grant, and they may find a Congress that will yield to their demands.

This, Mr. Speaker, is a question of the plighted faith of the nation, and it is for this Congress to determine now when they have given Mr. Sutro this franchise, and when by the terms of the contract, on which so much stress has been laid, he has at least twelve

years to complete the work, whether they shall withdraw what they have given, or shall tell him to go on and complete the work which he has commenced in good faith. I think it is the duty of this House at this time not to turn its back upon an enterprise which for magnitude assumes national importance, which is undertaken in good faith, and which, if Congress will stand by its plighted faith, will bring to its aid capital sufficient to build it long before the expiration of the time limited by these very contracts.

I move to lay the bill on the table.

Mr. SARGENT. On that I ask the yeas and nays.

The yeas and nays were ordered.

The question was taken; and it was decided in the affirmative—yeas 124, nays 42, not voting 54; as follows:

YEAS—Messrs. Ambler, Armstrong, Ayer, Banks, Barnum, Beaman, Beatty, Benjamin, Biggs, Bird, Blair, Boles, George M. Brooks, Buckley, Barr, Calkin, Cessna, Churchill, Cleveland, Coburn, Cook, Conger, Covode, Cox, Crebs, Cullom, Dawes, Dickinson, Dixon, Dockery, Donley, Dox, Duval, Eldridge, Ferriss, Garfield, Getz, Gibson, Gilfillan, Haight, Haldeman, Hale, Hambleton, Hamill, Hawkins, Hays, Heaton, Heflin, Holman, Ingersoll, Johnson, Alexander H. Jones, Judd, Julian, Kelley, Kerr, Ketcham, Knott, Ladin, Lawrence, Logan, Loughridge, Lynch, Marshall, Mayham, Maynard, McCormick, McGrew, McKenzie, McNeely, Eliakim H. Moore, Jesse H. Moore, William Moore, Morgan, Daniel J. Morrell, Samuel P. Morrill, Mungen, Myers, Negley, Niblack, O'Neill, Orth, Packard, Packer, Peters, Phelps, Poland, Pomeroy, Randall, Reading, Reeves, Rogers, Sanford, Schumaker, Scofield, Porter Sheldon, John A. Smith, Worthington C. Smith, Starkweather, Stevens, Stevenson, Stoughton, Strickland, Strong, Swann, Taffe, Tanner, Tillman, Townsend, Trimble, Tyner, Upson, Van Horn, Van Wyck, Ward, Cadwalader C. Washburn, William B. Washburn, Welker, Wheeler, Eugene M. Wilson, John T. Wilson, Witcher, Wood, and Woodward—124.

NAYS—Messrs. Ames, Archer, Asper, Atwood, Axtell, Bennett, Boyd, Buffinton, Burchard, Benjamin F. Butler, Clinton L. Cobb, Dyer, Farnsworth, Finkelburg, Fisher, Fitch, Hamilton, Harris, Hawley, Hill, Hoge, Kellogg, McKee, Mercier, Paine, Preece, Prosser, Rice, Sargent, Sawyer, Shanks, Lionel A. Sheldon, Sherrod, William J. Smith, William Smyth, Stokes, Strader, Twichell, Wells, Wilkinson, Williams, and Winans—42.

NOT VOTING—Messrs. Adams, Allison, Arnell, Bailey, Beck, Benton, Bingham, Booker, Bowen, James Brooks, Buck, Burdett, Roderick R. Butler, Cake, Clarke, Amasa Cobb, Cowles, Davis, Dickey, Ela, Ferry, Fox, Griswold, Hay, Hoar, Hooper, Hotchkiss, Jenckes, Thomas L. Jones, Kelsey, Knapp, Lash, McCarthy, McCrary, Milnes, Morphis, Morrissey, Palmer, Platt, Porter, Potter, Ridgway, Roots, Schenck, Slocum, Joseph S. Smith, Stiles, Stone, Sweeney, Van Auken, Van Trump, Voorhees, Willard, and Winchester—54.

So the bill was laid on the table.

Mr. FERRISS moved to reconsider the vote by which the bill was laid on the table; and also moved that the motion to reconsider be laid on the table.

The latter motion was agreed to.